

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JULIA K. BLACKMON
Claimant

VS.

YORK EVCON INTERNATIONAL
Respondent

and

**INSURANCE CO OF THE STATE OF
PENNSYLVANIA**
Insurance Carrier

Docket No. 1,007,321

ORDER

Claimant appealed the March 28, 2003 preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

ISSUES

This claim originated from an October 31, 2002 accident, when claimant fell from a three-foot retaining wall on respondent's premises while on her way to work. Claimant fractured her left leg in that fall. For purposes of this appeal, the compensability of that leg injury is not in dispute. What is in dispute is the compensability of claimant's subsequent fall on November 14, 2002 and her resulting left-wrist fracture. In the March 28, 2003 Order, Judge Barnes determined claimant's wrist injury was not compensable as a direct and natural consequence of the work-related leg injury and, therefore, denied the request for benefits.

Claimant contends Judge Barnes erred. Citing *Jackson*,¹ *Chinn*,² and *Frazier*,³ claimant argues her November 14, 2002 accident occurred when she lost her balance and fell due to the brace she was wearing on her leg and, therefore, the resulting wrist injury is compensable as a direct and natural consequence of her original work-related leg injury. Accordingly, claimant requests the Board to reverse the ALJ's Order and find that her November 14, 2002 accident likewise arose out of and in the course of her employment.

Conversely, in its brief to the Board, respondent argues the November 14, 2002 accident did not arise out of claimant's employment because it was a separate and unrelated event that occurred away from work. Respondent contends that claimant's description of the accident attributing her losing her balance to the brace on her leg is not credible. Accordingly, respondent requests the Board to affirm the ALJ's March 28, 2003 Order.

The only issue before the Board on this appeal is whether claimant's November 14, 2002 accident was a direct and natural result of her primary leg injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes that claimant's November 14, 2002 left wrist injury is compensable.

Claimant described her November 14, 2002 accident as follows:

Q. What happened after you were released from the hospital?

A. At that time, I went to my friend's house, Sandra Taber (ph), to recuperate, because I wasn't - I live by myself and they said I would need help.

Q. Your supervisors and folks there at York are aware that you were injured when you fell?

A. Yes.

Q. Did you injure yourself again after you fell at York?

¹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 439 P.2d 264 (1972).

² *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

³ *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

A. Yes, I did.

Q. And where did that happen?

A. Again at my friends house, Sandra Taber.

Q. And what day did that happen?

A. That was November the 14th.

Q. And about what time did that happen on November the 14th?

A. Approximately 12:30 a.m.

Q. Can you explain to the Administrative Law Judge how that accident happened?

A. I was woke up about - - late at night to use the restroom and had gotten up off of the bed with my walker and took a couple of steps and lost my balance and fell backwards and broke my wrist.

Q. Did your leg injury that you have have anything to do with the fall that you took at your friend's house?

A. Yes, because at the time I was having to wear a full leg brace and when I woke up, I lost my balance on my right foot.

Q. And fell?

A. And fell? ⁴

Claimant's description of how her fall occurred is uncontradicted. "Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy, and is ordinarily regarded as conclusive." ⁵

Respondent has not shown claimant's description of the accident to be untrustworthy, nor does the Board find the proposition that someone walking in a brace could lose their balance and fall is improbable or unreasonable. Accordingly, the Board accepts the testimony as conclusive.

⁴ P.H. Trans. at 21-22.

⁵ *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, Syl. ¶ 2, 558 P.2d 146 (1976).

Based on the record presented, the Board finds for purposes of preliminary hearing that claimant's November 14, 2002 accident is compensable under the Workers Compensation Act. Accordingly, The Board reverses that portion of the ALJ's March 28, 2003 Order which finds to the contrary.

WHEREFORE, the Board modifies the March 28, 2003 Order and concludes that claimant's November 14, 2002 accident arose out of and in the course of her employment with respondent. The Board remands this claim to the Judge to address claimant's remaining request for benefits in a manner consistent with this opinion.

IT IS SO ORDERED.

Dated this _____ day of June 2003.

BOARD MEMBER

c: Bruce L. Stewart, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director